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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,805	09/02/2003	Gordon Jeffrey Ulyett	206,228	4517
38137 7590 02/16/2010 ABELMAN, FRAYNE & SCHWAB 666 THIRD AVENUE, 10TH FLOOR NEW YORK, NY 10017				
EXAMINER JOHNSON, BLAIR M				
ART UNIT 3634		PAPER NUMBER		
MAIL DATE 02/16/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/653,805

Applicant(s)

ULLYETT, GORDON JEFFREY

Examiner

Blair M. Johnson

Art Unit

3634

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

Claims 31-33,36-38,41-43,46-48 and 51-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent basis for "the zipper" as it relates to the biasing means. Further, "zipper of the biasing means" is indefinite, thereby rendering these claims unexamined in their current state.

Claim Rejections - 35 USC § 103

Claims 29,30,34,35,39,40,44,45,49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sund (3,856,072) in view of Bachmeir (5,323,835).

Sund discloses, in Fig. 5, a retractable cover that has springs 27 located therein, which defines a "sheath", or the film material of the cover may be welded or adhesively bonded, as is conventional, to form the means by which the spring is held in the cover. The cover is secured to the surrounding structure by zippers along the top and sides. Bachmeir discloses a removable cover that uses hook and loop fastening means along the top and sides to seal the cover to the structure. Such a fastening means is merely an obvious mechanical expedient of the zippers of Sund and replacing the zippers with such hook and loop would have been obvious so as to, for instance, provide a fastener that does not require perfect alignment for connection, attaches and detaches more easily, etc. Regarding claim 30, the use of sewing for attaching the layers of material that eventually form the sheath constitutes a conventional manner of connecting fabric layers. Alternatively, since welding or adhesive attachment means is also conventionally

used, as discussed above, the "sheath" alternative in claim 29 may not be chosen, thereby rendering claim 30 nonlimiting by virtue of the subject thereof being directed to a structural feature not selected from the grouping of claim 29.

Claims 29,30,34,35,39,40,44,45,49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al (3,231,006) in view of Crider et al (5,785,105).

Fisher discloses, in Figs. 1-3, a retractable cover 1 that has springs 17 located therein, which defines a "sheath" or the film material of the cover may be welded or adhesively bonded, as is conventional, to form the means by which the spring is held in the cover. The cover in is connected to the top of the opening via screws or pins 9. However, the sides are not secured to the surrounding structure. However, Crider et al discloses a removable cover that uses hook and loop fastening means along the sides to seal the cover to the structure. Such a fastening means would be desirable in the Fisher structure so as to provide additional sealing means and providing Fisher with such hook and loop would have been obvious so as to ensure sealing. Regarding claim 30, the use of sewing for attaching the layers of material that eventually form the sheath constitutes a conventional manner of connecting fabric layers. Alternatively, since welding or adhesive attachment means is also conventionally used, as discussed above, the "sheath" alternative in claim 29 may not be chosen, thereby rendering claim 30 nonlimiting by virtue of the subject thereof being directed to a structural feature not selected from the grouping of claim 29.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blair M. Johnson whose telephone number is (571) 272-6830. The examiner can normally be reached on Mon.-Fri., 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Blair M. Johnson/
Primary Examiner, Art Unit 3634

BMJ
2/8/10